10

Office-Supreme Court, U.
FILED
DEC 5 1951
CHARLES ELMORE CROPL
CLER

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 462

PAUL F. LUCAS,

Petitioner,

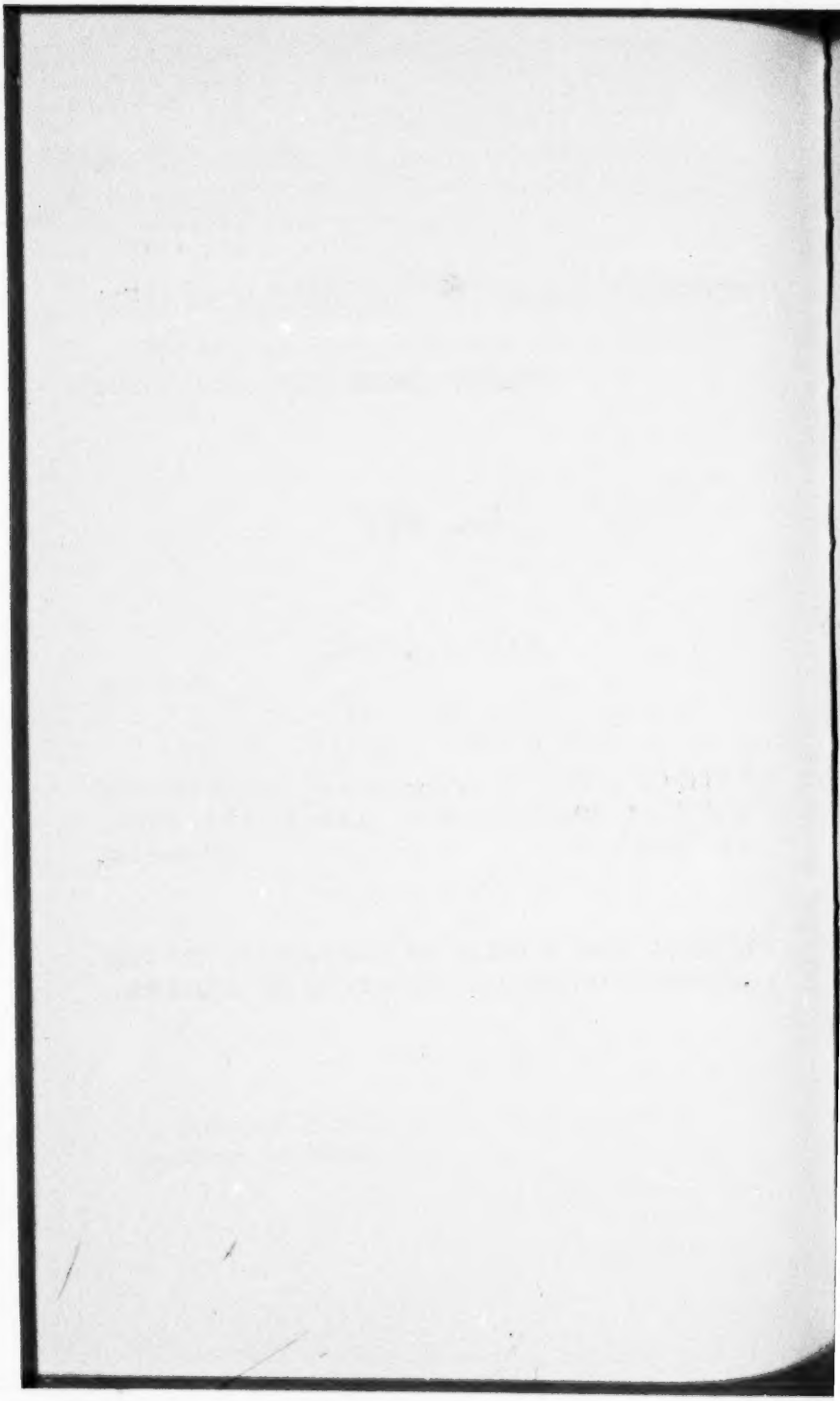
vs.

STATE OF INDIANA, ON RELATION OF THE BOARD OF MEDICAL REGISTRATION AND EXAMINATION OF INDIANA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF INDIANA

DAN C. FLANAGAN,
Counsel for Petitioner.



INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Opinions below	1
Jurisdiction	2
Questions presented	4
Statute involved	5
Statement	5
Specification of error to be urged	6
Reasons for granting the writ	6
Conclusion	7

Case Cited

Lucas v. *State of Indiana, ex rel. Board of Medical Registration and Examination of Indiana*, 99 N.E. (2d) 419	1

Statutes Cited

Acts of 1945 of the Gen. Assembly of Indiana, Chapter 80, Section 2	2
Constitution of the State of Indiana, Article I, Section 23	3
Constitution of the United States, 14th Amendment	3, 4, 6
Medical Practice Act, Section 63-1302, Burns' 1943 Replacement (1949 Supplement)	3
Medical Practice Act, Section 63-1305, Burns' 1943 Replacement (1949 Supplement)	4, 8
United States Code, Title 28, Section 1257(3)	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 462

PAUL F. LUCAS,

Petitioner,

vs.

STATE OF INDIANA, ON RELATION OF THE BOARD OF MEDICAL REGISTRATION AND EXAMINATION OF INDIANA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF INDIANA

Paul F. Lucas, petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Indiana, entered in the above entitled case on the 2nd day of October, 1951.

Opinions Below

The opinion of the Supreme Court of the State of Indiana (R. 14-24) is not yet reported in the official reports of that Court. However this opinion is reported in 99 NE(2) 419. The ruling on the petition for rehearing was entered without an opinion (R. 26).

Jurisdiction

The opinion of the Supreme Court of the State of Indiana (R. 14-24) was entered on June 21, 1951, and the denial for rehearing, making the judgment final, was entered on October 2, 1951 (R. 26). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3). This application for writ of certiorari is presented on the 5th day of December, 1951.

Respondent sought to enjoin petitioner from practicing chiropractic in the State of Indiana because he did not have a license duly issued under Section 2 of Chapter 80 of the Acts of 1945 of the General Assembly of the State of Indiana. The question of the constitutionality of this act under both the State and Federal Constitutions was presented by answer in bar in two paragraphs in the trial Court in the following language:

"That the relator is nonexistent. That the General Assembly of the State of Indiana by Section 2 of Chapter 80 of the Acts of 1945 attempted to create the Board of Medical Registration and Examination of Indiana for the purpose, among other things, of licensing chiropractors to practice the profession of chiropractics in the State of Indiana, and to determine as a matter of fact before issuing such license whether or not any person applying therefor is qualified to practice such profession. That said act insofar as it attempts to create such board for such purposes is unconstitutional as is hereinafter more specifically set forth" (R. 5 and 7), also,

"That this action cannot be maintained on the relation of such board and should abate until a legally constituted board under the laws and Constitution of the State of Indiana and of the United States is created" (R. 6), also,

"That this action cannot be maintained on the relation of the present board because the law under which it was

attempted to be created is unconstitutional and void (1) because of its attempt to create a board packed with members of the medical profession prejudiced against chiropractors and (2) because said board as formed under said act have administered said act in actual discrimination against said chiropractic profession" (R. 9).

To these two paragraphs of answer in bar the respondent addressed a demurrer (R. 10 to 12) which was sustained by the trial Court (R. 13).

The question was presented to the Supreme Court of the State of Indiana by petitioner's assignment of errors to that Court as follows:

"The trial Court erred in sustaining the demurrer of the appellee to appellant's second (2nd) and third (3rd) paragraphs of answer in bar and to each of said paragraphs of answer" (R. 2).

The Supreme Court of the State of Indiana recognized that the question as to the constitutionality of the involved state statute had been properly presented by the following language in its opinion:

"Appellant contends that the Medical Practice Act, Sec. 63-1302, Burns' 1943 Replacement (1949 Supplement), is unconstitutional in so far as it attempts to create a medical board to license chiropractors, (1) because the composition of the board is inherently discriminatory and prejudiced against chiropractors, (2) because each of the members of the medical profession has a pecuniary interest in the elimination of chiropractors, and (3) because an applicant for a chiropractic license could not receive a fair and impartial hearing before the medical board as constituted, all in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and of Article 1, Section 23, of the Constitution of Indiana.

"Appellant further contends that because of the last-cited act being unconstitutional the board is nonexistent, and appellant therefore is not required to have a license to practice chiropractics" (R. 16), and its holding in reference thereto as follows:

"The Legislature, in its enactment of Sec. 63-1305, Burns' 1943 Replacement (1949 Supp.), did not violate the Due Process Clause of either the Federal Constitution or the Constitution of Indiana.

"After examining all the contentions of appellant, we find that the demurrer to the second and third paragraphs of answer was properly sustained" (R. 24).

Question Presented

The question presented is whether there is a violation of the due process provisions of the 14th Amendment to the Constitution of the United States where:

1. A state legislature after recognizing the propriety of the practice of chiropractic within the state,
2. Provides for licensing of the members of such profession,
3. Creates an Administrative Board of five medical doctors, one osteopath and one chiropractor to pass upon the qualifications of the chiropractor to obtain a license,
4. Where it is admitted that the medical doctors are prejudiced against the chiropractors and will not consent to granting any a license.
5. Where no appeal is allowed to any Court, body or person for review of the decision of such board as to the fact of the qualification of any chiropractor.
6. And where such board has proceeded to administer the act in discrimination of chiropractors.

Statute Involved

The pertinent statutory provisions are printed in Appendix A, *infra* page 8.

Statement

On September 7, 1949, respondent files its action against petitioner in the Allen Circuit Court of Allen County, Indiana seeking a permanent injunction against the practice of medicine by petitioner in that county and state (R. 2-3). (By statute practice of chiropractic is included in the term "practice of medicine.") Several motions and an answer in abatement were filed by petitioner and overruled. They are not here involved and are therefore omitted. An answer in bar was filed, two paragraphs of which alleged in substance:

1. That petitioner is a graduate of a recognized college of chiropractic and fully qualified to practice that profession.

2. That he is not required to have a license to practice his profession in Indiana because there is no law providing for such a license except the statute here involved and that it is unconstitutional.

3. That the board created under its provisions consists of five medical doctors, one osteopath and only one chiropractor and that the medical doctors "do not recognize members of the chiropractic profession as practitioners of any of the healing arts, are inimicable to and prejudiced against them—have a pecuniary interest in the elimination of said chiropractors"; that this is a successor to one similarly constituted which had operated since 1927 and at no time had either board ever granted a license to a chiropractor; that no chiropractor has been licensed in Indiana since 1927 because of the discrimination of these boards (R. 5-9).

The respondent demurred to these two paragraphs of

answer thereby admitting the truth of the above averments (R 10). The demurrer was sustained (R. 13). Thereafter judgment was entered enjoining petitioner from practicing his profession (R. 13). Appeal to the Supreme Court of Indiana resulted in an opinion that the statute in question does not violate the due process provision of the 14th Amendment to the Constitution of the United States and that the demurrer was properly sustained (R. 14-24). A petition for rehearing was then filed in the Supreme Court of Indiana (R. 24-25). This petition was denied without an opinion (R. 26).

Specification of Error to Be Urged

The Supreme Court of the State of Indiana erred in holding that the Indiana Legislature in its enactment of Sec. 2 of Chapter 80 of the Acts of 1945 of the General Assembly of Indiana (Sec. 63-1305 Burns 1943 Replacement—1949 Supp.) did not violate the due process clause of the 14th Amendment of the Constitution of the United States.

Reasons for Granting the Writ

Petitioner urges the granting of this petition for the reasons that the question here presented is of great general importance and the decision of the Supreme Court of Indiana is wrong in the following particulars:

1. This statute and its similar preceding one has enabled a biased board of medical doctors to prevent a single, solitary chiropractor to obtain a license to practice in Indiana since 1927 even though the profession is recognized as a healing art under the public policy of the state as declared by its legislature. None but the older chiropractors who were exempt from the 1927 act remain and soon chiropractic will soon be ended in Indiana if this decision is not reviewed by this Court.

2. This method of bringing an end to all healing professions except those monopolized by the medical doctors will most probably spread, as it is spreading to all other states.

3. At present control of a legislature means the ability to set up such a board. But the day may come when the nonmedical men may obtain control of the legislature in Indiana or some other state and the same method may be used to bring an end to the practice of medical doctors.

4. If this method can be used to eliminate competitors in the field of healing arts it may become a legal and popular method to liquidate competitors in other fields.

5. The question strikes straight at the heart of the great body of Administrative Law, a comparative youngster in Jurisprudence and raises the challenge: "Shall the respected principle applying to regular Courts apply to these Courts; a man may not be a judge of his own Case." It has always been a maxim that on the facts a man is entitled to at least one fair Court. But on the facts no appeal is permitted from this board.

6. It is respectfully submitted that no sound legal reasons were advanced in the lower Court for the conclusion there reached. In support of this statement we call attention to the opinion of the Supreme Court of Indiana (R. 14 to 24) and the appellant's petition for rehearing (R. 24 and 25) wherein its errors are pointed out.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Date: December 5th, 1951.

DAN C. FLANAGAN,
Counsel for Petitioner.

APPENDIX "A"

Section 2 of Chapter 80 of the Acts of 1945 of the General Assembly of the State of Indiana (Section 63-1305, Burns Statutes of Indiana, 1943 Replacement, 1949 Supplement) reads as follows:

"The Board of Medical Registration and Examination of Indiana is hereby created. It shall consist of seven (7) members, not more than four (4) of whom shall be members of the same political party. The members shall be appointed by the governor, and all vacancies occurring on such board shall be filled by the governor. Immediately upon the taking effect of this act the governor shall make the following appointments to such board:

(a) Five (5) reputable physicians who are graduates of recognized medical colleges with the degree of Doctor of Medicine and hold unlimited licenses to practice medicine in the State of Indiana, two (2) of which appointees shall serve for one (1) year, one (1) for two (2) years, one (1) for three (3) years, and one (1) for four (4) years; and their successors shall serve for terms of four (4) years each.

(b) One (1) reputable osteopathic physician who shall be a graduate of a recognized school or college of osteopathy with the degree of Doctor of Osteopathy, licensed to practice osteopathy in the State of Indiana, who shall serve for a term of four (4) years.

(c) One (1) reputable chiropractor who shall be a graduate of a school or college teaching said system or method of healing and licensed to practice it in the State of Indiana; who shall serve for a term of four (4) years.

INDEX

SUBJECT INDEX

	Page
Motion of State of Indiana opposing Petition for Writ of Certiorari	1
Specification of Error Assigned	2
The issues before the Supreme Court of Indiana for decision	2
Argument	5
The statute creating the Board is Constitutional	6
Provisions for an Appeal	11
No substantial federal question presented	20
Conclusion	22
Appendix	23

CASES CITED

	Page
Brinkley v. Hassig (1939), (C. C. A., 10th Circuit), 83 F. (2d) 351, 356, 357	21
Brown v. Mass. (1939), 308 U. S. 504, — S. Ct. — (reported below in 20 N. E. (2d) 478)	20
Consolidated Edison Co. v. National Labor Relations Board (1938), 305 U. S. 197, 229, 59 S. Ct. 206	19
Dent v. West Virginia (1888), 129 U. S. 114, 9 S. Ct. 231, 32 L. Ed. 623	7, 19
Douglas v. Noble (1923), 261 U. S. 165, 167, and 168, 169, 43 S. Ct. 303	21
Eastman v. State (1886), 109 Ind. 278, 282, 10 N. E. 97	20
Evans v. Gore (1920), 253 U. S. 235, 247, 40 S. Ct. 550	21
Graves v. Minnesota (1926), 272 U. S. 425, 427 to 429, 47 S. Ct. 122	21
Myers et al. v. Bethlehem Shipbuilding Corp. (1938), 303 U. S. 41, 49 and 51, 58 S. Ct. 459	11, 19, 21
Orwitz v. Board of Dental Examiners (1941), 313 U. S. 546, 61 S. Ct. 1088 (Lower Court, 107 P. (2d) 407)	20
Selmer v. Oregon State Board of Dental Examiners (1934), 294 U. S. 608, 612, 55 S. Ct. 570	20
Spurgeon v. Rhodes (1906), 167 Ind. 1, 11, 78 N. E. 228	20

Page

State ex rel. Burroughs v. Webster et al. (1898), 150 Ind. 607 13

Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board (1936), 301 U. S. 142, 147, 57 S. Ct. 648..... 19

Willapoint Oysters, Inc. v. Ewing, Admr., Federal Security Agency et al. (C. C. A., 9th Circuit, 1949), 174 F. (2d) 676, 690..... 19

STATUTES CITED

	Page
Medical Practice Act	
Sec. 63-1306, Burns' Indiana Statutes, 1951 Replacement	4, 11
Sec. 63-1311, Burns' Indiana Statutes, 1951 Replacement	3
Administrative Adjudication Act	
Acts of 1947 General Assembly of Indiana, chapter 265, section 7	15, 23
Acts of 1947 General Assembly of Indiana, chapter 265, section 8	15, 24
Acts of 1947 General Assembly of Indiana, chapter 265, section 9	15, 24
Acts of 1947 General Assembly of Indiana, chapter 265, section 10	16, 25
Acts of 1947 General Assembly of Indiana, chapter 265, section 11	16, 25
Acts of 1947 General Assembly of Indiana, chapter 265, section 13	16, 25
Acts of 1947 General Assembly of Indiana, chapter 265, section 14	16, 26
Acts of 1947 General Assembly of Indiana, chapter 265, section 16	17, 28
Acts of 1947 General Assembly of Indiana, chapter 265, section 18	18, 28
Acts of 1947 General Assembly of Indiana, chapter 265, section 19	19, 29
Acts of 1947 General Assembly of Indiana, chapter 265, section 24	14, 23

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 462

PAUL F. LUCAS,

Petitioner,

v.

STATE OF INDIANA, on Relation of the BOARD OF MEDICAL REGISTRATION AND EXAMINATION OF INDIANA,

Respondent.

MOTION OF STATE OF INDIANA OPPOSING PETITION FOR WRIT OF CERTIORARI

The above respondent, by and through the Attorney General of Indiana, respectfully prays that a Writ of Certiorari not in issue to review a judgment of the Supreme Court of the State of Indiana affirming the judgment of the Circuit Court of Allen County, Indiana, granting a permanent injunction against the above petitioner prohibiting him from practicing medicine in the State of Indiana so long as he does not have a license to do so.

SPECIFICATION OF ERROR ASSIGNED

It is clear the only error assigned by petitioner (Petition, page 6) is that the Supreme Court of Indiana erred in holding that the Indiana legislature in its enactment of section 2 of chapter 80 of the Acts of the General Assembly of Indiana of 1945 (Sec. 63-1305, Burns' 1943 Replacement, 1949 Supp.) did not violate the Due Process Clause of the fourteenth amendment of the Constitution of the United States.

While under the title of "Questions Presented" (Petition, page 4), petitioner attempts to inject into such Assignment of Error a number of other incidental questions relating to alleged prejudice and discrimination by the Board of Medical Registration and Examination of Indiana (hereinafter referred to as Board), together with his proposition that no appeal is allowed for review of said Board's decision as to the fact of the qualification of any chiropractor. It is respectfully submitted that the only question before this court on this petition is whether or not the above referred to statute is constitutional by virtue of the composition of said Board. That the other matters referred to are immaterial until this court has first determined that said act is unconstitutional. This is true, due to the pleadings and issues in the case, as will be hereinafter more fully discussed.

THE ISSUES BEFORE THE SUPREME COURT OF INDIANA FOR DECISION

This was an appeal to the Supreme Court of Indiana from the judgment of the Circuit Court of Allen County, Indiana, awarding respondent a permanent injunction against petitioner herein practicing medicine in the State of Indiana so long as he has no license to do so.

The complaint was filed pursuant to section 63-1311, Burns' Indiana Statutes, 1951 Replacement, same being section 1, chapter 248, Acts 1927. This statute specifically defines the practice of medicine and thereafter authorizes an action of injunction to be filed in the manner herein followed under a complaint alleging that on a certain date in a certain county the defendant practiced medicine without having a license to do so. All unspecified procedure was to be had in accordance with the general laws of the state relating to actions of injunction.

To this complaint petitioner herein filed his second and third paragraphs of answer contending that section 2 of chapter 80 of the Acts of 1945 (which merely creates the Board) was unconstitutional, due to the fact that said Board was composed of five medical doctors, one chiropractor and one osteopathic physician and, as such, constituted a packed court and therefore unconstitutional. While these paragraphs of answer also allege generally that the medical members of said Board were biased and prejudiced against chiropractors and that said Board had refused to issue licenses to chiropractors, except under the "Grandfather Clause" since 1927, and which were necessarily admitted for the purposes of the respondent's demurrer thereto, these other matters were matters for secondary consideration after a determination of the constitutionality of the act on the question of a packed court.

This necessarily resulted from the fact that the demurrer of respondents attacked the sufficiency of the answers, first, on the premise that said statute creating said Board was constitutional and then, proceeding on the assumption of the constitutionality of the act, asserted that the remaining parts of said answers constituted a collateral attack upon said Board, for, if the act was constitutional, petitioner's only remedy was an application for

licensure, and, on being denied the same, that he proceed with an appeal therefrom under the statutes of the State of Indiana adequately making provision for such an appeal. The demurrer pointed out that petitioner did not allege that the standards fixed by the statute or the Board were unreasonable; that he had ever applied for or been refused a license or attempted to avail himself of his exclusive remedy of appeal, nor did he allege that at any time any chiropractor possessing the qualifications fixed by the statute and the rules of said Board had ever applied for a license and been refused, or that they had ever pursued their remedy of appeal.

Petitioner, in his petition on page 2, asserts he was enjoined because he did not have a license issued to him under section 2, chapter 80, Acts of 1945. This is not entirely correct, as the act referred to merely creates the Board, while an application for and the issuance of a license is governed by section 63-1306, Burns' Indiana Statutes, 1951 Replacement, same being section 5, chapter 169, Acts 1897, as finally amended by section 1, chapter 253, Acts 1947.

ARGUMENT

As previously pointed out, the sole error assigned to this court on this Petition of Writ of Certiorari is the question of the constitutionality of the composition of the Board of Medical Registration and Examination of Indiana, as created by section 2, chapter 80 of the Acts of the General Assembly of Indiana of 1945. Under the issues raised in the Circuit Court and reviewed by the Supreme Court of Indiana on respondent's demurrer to the second and third paragraphs of answer of the petitioner herein, the question was: first, was said act unconstitutional creating said Board due to the fact that five of its members were required to be medical doctors and the holders of an unlimited license to practice medicine, one member an osteopath and the remaining member a chiropractor; second, if the act was constitutional, then did the allegations of said paragraphs of answer, as necessarily admitted by and for the purpose of the demurrer, as to alleged prejudice of the members of said Board against chiropractors, and in allegedly refusing them licenses, constitute a defense in an action for injunction against an unlicensed chiropractic practitioner, where it was not alleged he had ever applied for a license, been refused a license, or taken any steps to have his right thereto determined under the appellate procedure available to him or by way of any other right of action, such as mandamus; and in which answers it was further not alleged that the standards for licensure of chiropractors, as fixed by the statutes and as supplemented by the rules of said Board, were unreasonable; nor where it was alleged in said answers that any other chiropractors possessing the necessary reasonable prescribed qualifications had ever applied for such license to the Board, been refused a license, or tested his right thereto by an appeal or in any other manner. These issues were fully dealt with by the Supreme Court of

Indiana in which it first held that said statute creating said Board was not unconstitutional for any of the reasons alleged and thereafter concluded that the other issues presented would constitute a collateral attack upon the Board, which is not permitted by any of our court's decisions.

The questions will therefore be considered in the following order.

THE STATUTE CREATING THE BOARD IS CONSTITUTIONAL

Petitioner's theory is that medical doctors, holding unlimited licenses to practice medicine in Indiana, having a five to one majority on said Board, as created by section 2, chapter 80 of the Acts of 1945, in fact makes said Board a packed court for the determination of issuance of chiropractor licenses on his assurance that the medical doctors are necessarily in competition with the chiropractors, and that such Board, so composed, is thereby unconstitutionally created.

The fallacy of petitioner's position is clear when it is considered that, if his theory was carried out, all persons whose theories of treatment differed from the theories of the other practitioners could require a separate board composed only of the adherents of their theory of practice. To name only a few in the State of Indiana, might be considered the number of different specialists among the unlimited practitioners themselves, such as: general practitioners, nose and throat specialists, surgeons and psychiatrists. To this could be added those in the drugless field, such as: naturopathic physicians, chiropractors, osteopaths, podiatrists, hot hand healers, etc. If this theory is true and such principle is extended to every other profession or calling which is the subject of state licensure,

we would soon find everyone in the State of Indiana serving on a state board.

The answer to this question is fully met by that part of the decision of the Supreme Court of Indiana in this case found in the Record, pages 21-24, where, after reviewing numerous decisions of our State Supreme Court as to the authority of the legislature to enact such legislation under the police power of the state, and quoting from many of said decisions, including the quotation from the case of *Dent v. West Virginia* (1888), 129 U. S. 114, 9 S. Ct. 231, 32 L. Ed. 623, it is stated:

> "The reasoning in the last-cited case applies equally to the practice of chiropractics, since both medical doctors and chiropractors minister to the ills of the human body. (fol. 33.) The Board of Medical Registration and Examination has through its adopted rules set requirements in compliance with legislative enactment as to educational requirements as well as requirements for examination. Therefore, if a chiropractor desires to be licensed in this state, he must meet the requirements as set by the Board of Medical Registration and Examination.
>
> "Appellant further contends that the composition of the Board of Medical Registration and Examination is unconstitutional because the members of the medical profession have a direct, pecuniary interest in the elimination of chiropractics. Appellant relies principally upon the case of *Milk Marketing Board v. Johnson* (1940), 295 Mich. 644, 295 N. W. 346, in which case the act creating the Milk Marketing Board provides that the board shall consist of five members, one member to be the commissioner of agriculture, and the four other members to be appointed, two of whom were to be milk producers not connected with the distribution of milk, one a distributor of milk, and one a consumer of milk. The distributor appointed was a member

of the firm which was the third largest distributor in the Detroit area, one member was the President of the Michigan Milk Producers Association, and another was a member of the Kalamazoo Milk Producers Association. The Commissioner of Agriculture was also a producer of milk. The Michigan Milk Producers Association provided 80 per cent. of the milk sold in the Detroit marketing area. Johnson was the fourth largest milk distributor in the Detroit area.

"(fol. 34.) The Milk Marketing Board, after hearing, issued Order No. 2, as amended, relative to the minimum prices to be paid producers of milk by distributors in the Detroit area, and Orders Nos. 3 and 4 relative to minimum prices at which milk could be sold to the consumer. Orders Nos. 3 and 4 were appealed by certiorari, as the act provided, and the board filed suit against Johnson to enforce Order No. 2. The Michigan Supreme Court reversed the Circuit Court, and vacated all orders of the board, stating, among other things, that the act required the appointment of a board, the majority of whose members have a direct, pecuniary interest in the matters submitted to them; and in order that the administration of the milk industry be conducted in a fair and impartial manner it was essential that the board be impartial in its composition, and therefore the act is fatally defective in its provisions for the appointment of the personnel of the board. The court further said that Johnson was entitled to a fair and impartial hearing before the fixing of prices and regulation of his business; that while the prices fixed by the board applied to all producers and distributors, the effect of the price scale was not the same upon all; that no one should act as a judge in his own cause; and that the board, as constituted under the statute, was of such a nature that Johnson was not, and could not have been, accorded a hearing which satisfies the requirements of due process.

"In the case now before us it appears that a majority of the Board of Medical Registration and Examination are members of the medical profession, holding a license to (fol. 35) practice medicine, obstetrics, and surgery. There is no contention that these members are directly pecuniarily interested except by reason of that fact. None of the members are shown to be from the community in which appellant lives, and none of the members are shown to be financially interested in any way in appellant's community or in his practice. In the Milk Marketing Case, *supra*, the members of the Milk Board were shown to be directly affected by the minimum prices to be charged. In the action now before us, the members of the Medical Board, even though they were from the same community as appellant, would appear to have only an indirect, pecuniary interest. In the case of *Metsker v. Whitsell* (1914), 181 Ind. 126, 137, 103 N. E. 1078, 1082, this court said:

> "'A judge's direct, pecuniary interest in the result of the litigation furnishes sufficient ground for his recusation, regardless of whether such interest is great or small. (Cases cited.) However, where the interest is indirect, such as that of a general taxpayer, it does not ordinarily disqualify.'

"See, also, *Decatur Twp. v. Board of Comrs. of Marion Co.* (1942), 111 Ind. App. 198, 39 N. E. 2d 479. The rule in the last-cited case applies to judicial and *quasi* judicial officers. Under this rule, the members of the Board of Medical Registration and Examination would not be disqualified to perform the duties imposed upon them. *Eastman v. State* (1887), 109 Ind. 278, 10 N. E. 97; *State ex rel. Burroughs v. Webster et al.* (1898), 150 Ind. 607, 50 N. E. 750, *supra*.

"The composition of the Board of Medical Registration and Examination, and the manner in which

it may function (fol. 36), is a legislative question, and not judicial, *Wilkins v. State* (1888), 113 Ind. 514, 16 N. E. 192, the wisdom of which is a matter to be determined by the Legislature. *State ex rel. Burroughs v. Webster et al., supra; State ex rel. Board, etc. v. Cole* (1939), 215 Ind. 562, 20 N. E. 2d 972; *Wilkins v. State, supra.* So long as the Constitution is not offended, we may not interfere with its enactments.

"Appellant further contends that he cannot have a fair and impartial hearing before the Medical Board as now constituted. Appellant's answer fails to allege that he has met the qualifications and that he has applied for a license. He contends that because five members of the board are medical doctors, holding unlimited licenses to practice medicine, they desire to eliminate all chiropractors and monopolize the profession. Merely because a person holds a license in a certain professional field, and is appointed to a board to pass upon the qualifications of those requesting a license to operate in that field, it cannot be said to justify the assertion that he is so unfair and partial that he cannot fairly and impartially pass upon the requirements and fix the standards as set by the Legislature. If this were true, the composition of every professional board in the State of Indiana, including the Board of Law Examiners, would offend the Constitution. Whether or not the Medical Board is unfair and partial cannot be determined until appellant meets the requirements as set by the board (concerning which requirements appellant does not complain (fol. 37)) and applies for a license. *State ex rel. Board, etc. v. Cole* (1939), 215 Ind. 562, 20 N. E. 2d 972, *supra; State ex rel. Board, etc. v. Henry* (1951), — Ind. —, 97 N. E. 2d 487; *State ex rel. Board, etc. v. Frasure* (1951), — Ind. —, 98 N. E. 2d 365, *supra.*

"Appellant, by his answer, is attempting to make a collateral attack upon the conduct of the Medical

Board. This appellant cannot do. *State ex rel. Board, etc. v. Frasure, supra; State ex rel. Board, etc. v. Cole, supra.*

"The Legislature, in its enactment of Section 63-1305, Burns' 1943 Replacement (1949 Supp.), did not violate the Due Process Clause of either the Federal Constitution or the Constitution of Indiana."

By the foregoing, our court necessarily took judicial knowledge of the provisions relative to an appeal from any adverse action of said Board relative to any application for licensure—as the last two cases cited by the court deal primarily with the proposition that a person unlawfully denied a license by the Board should appeal or take such steps necessary to secure a license and that the wrongful refusal of a license was not the equivalent of a license.

That the administrative remedy must be first exhausted see: *Myers v. Bethlehem Shipbuilding Corporation* (1938), 303 U. S. 41, 50, 51, 58 S. Ct. 459.

PROVISIONS FOR AN APPEAL

Section 63-1306, Burns' 1951 Replacement, same being section 5, chapter 169, Acts 1897, as finally amended by section 1, chapter 253, Acts 1947, is the section of Indiana statute among other things providing for the meetings of said State Medical Board; requiring said Board to enforce the Medical Practice Act; requiring the establishment and the keeping of a record of a schedule of minimum requirements to be complied with by applicants for examination for licensure; requiring said standards to be printed and circulated; prescribing that no such schedule of requirements shall discriminate for or against any school or system of medicine; requiring the Board, when an application for a certificate is made, which certificate is accompanied

by a diploma from a medical college, to determine if the standards maintained by said college conform to the standards prescribed in the published rules of the Board and whether the applicant otherwise meets the requirements of such rules fixed by said Board. If such facts are found to exist, the statute requires a certificate to be issued after successfully passing the prescribed examination. Said section of said statute is very lengthy and, in the interest of brevity, only the following portions are set out. Among other things it provides:

> "* * * If the board shall refuse to grant a certificate for any of the reasons above stated, it shall enter such refusal upon its record, together with a statement of the grounds for such refusal. An appeal may be taken from the action of the board to the circuit or superior court of the county in which such license was issued, in case of revocation, and to the county where the applicant lives, in case of refusal of a certificate, upon the licensee or applicant filing with the clerk of such court, within thirty (30) days from the entering of such order of revocation or refusal by said board, a good and sufficient bond in the sum of two hundred dollars ($200), to be approved by said clerk, to secure the payment of costs of such appeal should the appeal be determined against him. It shall thereupon be the duty of such clerk to notify the said board of the filing of such bond, and said board shall thereupon forward to said clerk the charges, together with a copy of the order of revocation, where there has been a revocation, or the application for a certificate and a copy of the order of refusal, where there has been a refusal to grant a certificate. The clerk of said court shall thereupon docket the same as a cause pending in said court. * * * There the appeal is from a refusal to grant a certificate, the same shall be heard upon the application and certified copy of the order of refusal without any other issues;

> the same to be tried by the judge of said court, who shall, upon his finding, enter a judgment that the license shall or shall not be issued, as the facts may require, and, upon such order, the clerk of such court shall issue the proper license showing therein the authority by which it is issued, and shall report the same to the state board. * * * Appeals from the judgment of said court may be prosecuted to the Supreme Court as in other civil cases, either by said board in its own name or by the applicant or holder of such license or certificate, where the judgment may be against him. * * *
>
> "Wherever the state board of medical registration and examination is named in this section or is referred to either by a pronoun or by use of a part of said name, it shall be taken and construed to be and include any successor to the said board or any board exercising the duties and functions of the said board, by any other name.
>
> "If any act is passed by this session of the general assembly concerning uniform methods of conducting administrative hearings, proceedings and appeals, the provisions of such act shall control, in so far as applicable, regardless of whether said act is passed or becomes effective before or after the passage or effective date of this act. * * *"

Such an appeal from the action of said Board has been recognized by the Supreme Court of Indiana from the time said statute was passed, for in 1898, our Supreme Court in the case of *State ex rel. Burroughs v. Webster et al.* (1898), 150 Ind. 607, at 613, in construing said Medical Act, said:

> "* * * To protect the applicant from any injustice on the part of the board, in so refusing or revoking a certificate, the act provides for an appeal. The tribunal of appeal, though not named in

this section, is the circuit or superior court of the proper county, the county of the applicant's residence, as shown in section 2 of the act."

The last section quoted from the above statute has as its purpose a recognition that, in the event the legislature enacted, which it did, the Administrative Adjudication Act of 1947, all provisions of said statute in conflict would be superseded and controlled by the provisions of the Administrative Adjudication Act.

Indiana is justly proud of its Administrative Adjudication Act (Sec. 63—3001-3030, Burns' Indiana Statutes, 1951 Replacement, same being chapter 365 of the Acts of the General Assembly of Indiana for 1947), which it feels meets all requirements of due process and which has been copied by many of our sister states since its enactment. It is too long to copy verbatim in the Appendix of this brief but a number of its sections will be referred to and those sections deemed necessary will be hereinafter found in the Appendix and such fact noted in the following discussion.

Under sections 1 and 2 of the Act, it is made to apply to this Board; under section 30 of the Act, it supersedes all other statutes in conflict therewith, and, under sections 3 and 14 of the Act, a compliance with its appeal provisions are made the exclusive remedy.

Section 24 of said Act provides that it shall not apply to proceedings for the issuance of licenses on application, but that such proceedings shall be held under the provisions of law relating to the particular agency. However, when an application for license is denied under the agency law, the applicant shall have fifteen (15) days after refusal to file a written application for a hearing before the ultimate authority of such agency. The applicant shall be the moving party, have the burden of proof, and the hearing

shall be conducted in accordance with the provisions of the Administrative Adjudication Act. (See Appendix, p. 23.)

It therefore follows that when applicant to the board is refused a license under a proceedings governed by the foregoing medical statute said party then has a right to appeal to the full Medical Board for a hearing to be conducted under the Administrative Adjudication Act and all further proceedings are carried out under the terms of said Administrative Adjudication Act.

Section 7 of said Act requires a hearing to be held before the ultimate authority of the agency and that no evidence be received except upon reasonable opportunity for all persons to be present; it makes provisions for administration of oaths, issuance of subpoenas and provides for the receiving of oral and documentary evidence; provides for depositions, disposal of procedural motions, and otherwise regulates the conduct of such hearings. (See Appendix, p. 23.)

Section 8 of the Act authorizes such hearing to be held in an informal manner without recourse to technical common law rules of evidence and that the introduction of evidence shall be deemed sufficient, and govern the proof, decision and administrative or judicial review of all questions of fact if substantial, reliable and prohibitive evidence supports such agency's determination. It requires the exclusion of irrelevant, immaterial and unduly repetitious evidence. Each party is guaranteed the right to submit evidence in open hearing with the right of cross-examination. (See Appendix, p. 24.)

Section 9 of the Act provides for a transcript to contain the exhibits, notices, all pleadings, exceptions, motions, requests and papers filed, and it shall be available to all

parties for examination, and any party may obtain a copy at his expense. It provides that the agency or board employ or pay for the services of a reporter, to be designated as its official reporter for the purpose of said hearing and to make a shorthand or stenotypy notation of all evidence and matters at such hearing. When a petition for judicial review is filed, said transcript shall be prepared at the expense of the moving party, certified to by the ultimate authority of such agency and shall be admissible without further proof in any subsequent review or proceeding affecting such determination of such agency. (See Appendix, p. 24.)

Section 10 of the Act provides that all issues of fact shall be considered and determined upon the record required to be made in conformity with said Act; that the agency make an informal finding of facts which shall encompass the relevant facts shown. (See Appendix, p. 25.)

Section 11 of the Act requires that the final order or determination of the agency shall be made by its ultimate authority and at least a majority of the members thereof. (See Appendix, p. 25.)

Section 12 of the Act, among other things, requires that all final orders and determinations of the agency shall be given promptly to all parties to the hearing.

Section 13 requires that every order or determination of the agency shall be in full force and effect after being duly entered in the permanent records of the agency and subject to review, as provided in the Act; they shall remain in effect unless revoked or set aside by a court on review; on appeal to a court, a stay order may be obtained, as later provided for in the Act. (See Appendix, p. 25.)

Section 14 provides that any person aggrieved by any order or determination of any agency shall be entitled to

a review to be filed in the circuit or superior court of a county in which such person resides or in the county in which such order is to be carried out or enforced. Such appeal is by verified petition setting out the order and determination so made and alleging specifically wherein said order or determination is: "(1) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; or (2) Contrary to constitutional right, power, privilege or immunity; or (3) In excess of statutory jurisdiction, authority or limitations, or short of statutory right; or (4) Without observance of procedure required by law; or (5) Unsupported by substantial evidence." Such petition for review shall be filed within fifteen (15) days after such order is made and, if not appealed within such time, all rights of judicial review and rights of recourse to the courts shall terminate. Written notice of such appeal shall be served upon the agency and upon the Attorney General. Within fifteen (15) days after filing such appeal, the appellant shall secure a certified copy of the transcript of the proceedings before the agency and file the same with the clerk of such court of review. It provides for extension of time for securing the transcript for good cause. Failure to prosecute such appeal is cause for dismissal. All persons parties to such hearing shall be made parties to the petition for review and notified thereof. (See Appendix, p. 26.)

Section 15 makes provision for newly discovered evidence pending appeal.

Section 16 requires such verified petition for review to be docketed by the clerk of such court and the issues shall be deemed closed without the filing of any pleadings. It provides for change of venue from the judge and from the county under the laws now governing changes of venue in civil actions. (See Appendix, p. 28.)

Section 17 provides for stay of proceedings by the court of review pending final determination.

Section 18 of the Act provides that on judicial review by the Circuit Court the cause is not tried *de novo,* but the facts shall be considered and determined exclusively upon the record filed with the court pursuant to said Act; if the court finds the agency has complied with the procedural requirements of the Act, and its finding, decision or determination is supported by substantial, reliable and probative evidence, such agency's finding, decision or determination shall not be set aside or disturbed. If the court finds such findings, decision or determination arbitrary, capricious or an abuse of discretion or otherwise not in accordance with the law; or contrary to constitutional right, power, privilege or immunity; or in excess of statutory jurisdiction, authority or limitations, or short of statutory right; or without observance of procedure required by law; or unsupported by substantial evidence, the court may order the decision of the agency set aside, it may remand the case for further proceedings to the agency and compel agency action where unlawfully withheld or unreasonably delayed. Said court, in affirming or setting aside said decision of the agency, shall enter its written findings of facts and enter of record its written decision or order of judgment. (See Appendix, p. 28.)

Section 21 of said Act makes provision for any party to such hearing to subpoena witnesses and is made effective through the enforcement powers of the county circuit and superior courts. Section 22 of said Act provides that any party to such proceedings shall be permitted to be represented by counsel.

Although the foregoing reference to the Administrative Adjudication Act of Indiana is quite lengthy and tends to unduly lengthen this brief, considering the pertinent parts

of said statute set out in the Appendix hereto, it is deemed advisable, in order that this court may be fully cognizant that any party applying for a license to the Medical Board of Registration and Examination of Indiana and being unlawfully denied a license, has a full and adequate remedy of appeal to the county circuit court and to the Supreme Court of Indiana and finally to this Court. (Sec. 19, Appendix, p. 29.)

Said Act, with reference to what an appellate court may consider in reviewing the facts, and the sufficiency of the evidence, is in full accord with the United States statutes on administrative practice applicable to said agencies, which have been consistently upheld by this court and the federal courts.

Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board (1936), 301 U. S. 142, 147, 57 S. Ct. 648;

Myers et al. v. Bethlehem Shipbuilding Corp. (1938), 303 U. S. 41, 49, 58 S. Ct. 459;

Willapoint Oysters, Inc. v. Ewing, Admr., Federal Security Agency et al. (C. C. A., 9th Circuit, 1949), 174 F. 2d 676, 690;

Consolidated Edison Co. v. National Labor Relations Board (1938), 305 U. S. 197, 229, 59 S. Ct. 206.

The Supreme Court of Indiana, having judicial knowledge of said right of appeal given by the Indiana Statutes, correctly held the petitioner herein could not by his answers collaterally attack the actions of the Board and that, therefore, said answers were insufficient to constitute a defense to respondent's complaint. (R., pp. 17-21.) Also see *Dent v. West Virginia* (1888), 129 U. S. 114, 124, 9 S. Ct. 231.

NO SUBSTANTIAL FEDERAL QUESTION PRESENTED

It has been held that the regulations of the practice of medicine and dentistry are under the police power of the state, and that such regulations do not violate either the fourteenth amendment or the Due Process Laws of the federal constitution, nor any provision of the Indiana State Constitution, and are essentially a matter of state's rights.

Selmer v. Oregon State Board of Dental Examiners (1934), 294 U. S. 608, 612, 55 S. Ct. 570;
Spurgeon v. Rhodes (1906), 167 Ind. 1, 11, 78 N. E. 228;
Eastman v. State (1886), 109 Ind. 278, 282, 10 N. E. 97.

On the authority of the Selmer case, *supra*, the United States Supreme Court refused to review like cases on the ground no substantial federal question was presented.

Orwitz v. Board of Dental Examiners (1941), 313 U. S. 546, 61 S. Ct. 1088 (Lower Court, 107 P. 2d 407);
Brown v. Mass (1939), 308 U. S. 504, 60 S. Ct. 96 (reported below in 20 N. E. (2d) 478).

This court and the United States Circuit Courts of Appeal have consistently held that, where the proper legislative authority has created and delegated to an agency the authority to hear and determine matters, and that agency is the sole agency available for such hearing and determination, that from the necessities of the case any bias or prejudice of the members constituting such agency or court does not disqualify them from determining the question where due process is complied with by authorizing an appeal and judicial review.

Brinkley v. Hassig (1939), (C. C. A., 10th Circuit), 83 F. (2d) 351, 356, 357;
Evans v. Gore (1920), 253 U. S. 245, 247, 40 S. Ct. 550.

Requiring a person to meet reasonable requirements for qualification, and to take an examination, to determine fitness for medical licensure does not violate the Due Process Clause and other provisions of the Fourteenth Amendment to the Constitution of the United States.

Graves v. Minnesota (1926), 272 U. S. 425, 427 to 429, 47 S. Ct. 122;
Douglas v. Noble (1923), 261 U. S. 165, 167, 43 S. Ct. 303.

A person is required to first apply for licensure and if through an abuse of authority a license is denied by the board, the remedy is to review, by some appropriate proceedings, the conduct of the board, not to attack the validity of the act.

Myers v. Bethlehem Shipbuilding Corporation (1938), 303 U. S. 41, 50, 51, 58 S. Ct. 459;
Douglas v. Noble, supra, pp. 168, 169.

The Supreme Court of Indiana correctly held, and it is not contested here, that the standards fixed by the legislative authority for the licensing of chiropractors, and the rules of the Board adopted pursuant to and in compliance therewith, are not unreasonable. (R., pp. 16 and 17.)

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Date: January —, 1952.

J. EMMETT MCMANAMON,
Attorney General of Indiana,

THOMAS L. WEBBER,
Deputy Attorney General of Indiana,
Counsel for Respondent.

APPENDIX

INDIANA ADMINISTRATIVE ADJUDICATION ACT

Chapter 365, Acts of the General Assembly of Indiana of 1947

SEC. 24. The provisions of this Act shall not apply to the proceedings for the issuance of licenses or permits on application but the proceeding for such license or permit by such proceedings shall be under the provisions of the law relating to the particular agency, however, whenever an application for a license or permit is denied under the provisions of the law relating to a particular agency such applicant shall be entitled to have a hearing before the ultimate authority of such agency on such denial upon filing within fifteen (15) days after such refusal a written application for such hearing. At such hearing said applicant shall be the moving party and have the burden of proof. Such hearing shall be conducted in accordance with the provisions of this Act for hearing before an agency.

SEC. 7. Every hearing held by any agency where an order may be made or determination had against any person the same shall be by the ultimate authority of the agency except as herein otherwise provided. No evidence shall be received except upon reasonable opportunity for all persons to be present. The agency and the officer, agent or representative presiding at the hearing shall have the power to administer oaths and affirmations, issue subpoenas, rule upon offers of proof and receive relevant oral or documentary evidence, take or cause depositions to be taken, regulate the course of the hearing and conduct of the parties, hold informal conferences for the settlement or simplification of the issues by consent of the party or parties, dispose of procedural motions and similar matters, and such other powers as may be given by the

law relating to the particular agency which is not in conflict with this Act.

SEC. 8. Such agency is hereby authorized to conduct such hearing in an informal manner and without recourse to the technical common law rules of evidence required in proceedings in judicial courts, and such manner of proof and introduction of evidence shall be deemed sufficient and shall govern the proof, decision, and administrative or judicial review of all questions of fact if substantial, reliable and probative evidence supports such agency's determination. Every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every person who is a party to such proceeding shall have the right to submit evidence in open hearing and shall have the right of cross-examination. Hearings may be held at any place in the State determined by the agency.

SEC. 9. The transcript of testimony adduced and exhibits admitted together with the notice, all pleadings, exceptions, motions, requests and papers filed, other than briefs or arguments of law, shall constitute the complete and exclusive record of such hearing and determination of such agency and it shall be available to all parties for examination. Any party may obtain a copy thereof at its expense.

Such agency is hereby authorized to employ and engage the services of a stenographer or reporter, either on a full time or part time basis as deemed advisable by such agency and pay for such services of such stenographer or reporter from any funds available to such agency or from any funds which may hereafter be appropriated therefor.

Said stenographer or reporter so employed for such purpose shall be designated by such agency for the purpose of any such hearing as its official reporter to take down in shorthand or stenotypy all evidence and matters occurring at such hearing

exclusive of oral arguments thereon. Whenever objections are filed to recommended determinations or when a petition for judicial review is filed, such evidence together with the original or a copy of all exhibits admitted and with the notice of hearing, all pleadings, exceptions, motions, requests and papers, filed, other than briefs or arguments of law, shall be incorporated in a transcript and certified to by the officer, agent or representative of such agency presiding at the hearing or by the ultimate authority of such agency where the hearing was before such ultimate authority. Such transcript when so prepared and certified shall be admissible without further proof in any subsequent review or proceeding affecting such determination of such agency, and shall be prima facie evidence of all facts therein contained as the complete record of such hearing or determination.

SEC. 10. All issues of fact shall be considered and determined upon the record required to be made in conformity with this Act, except as herein otherwise provided as to newly discovered evidence. Said agency shall make an informal finding of facts which shall encompass the relevant facts shown by the evidence. Said finding of facts may be made by direct statement or by reference to the particular charges made in the complaint before such agency.

SEC. 11. The final order or determination made by the agency shall be made by the ultimate authority of such agency and where the agency consists of more than one person it shall be made by at least a majority thereof. Proceedings for revocation of licenses shall be heard and determined by not less than a majority of the members comprising such agency.

SEC. 13. Every order or determination so made shall be in full force and effect after it is duly entered and spread of record in the permanent records of the agency, provided, however, that the

same may be reviewed as hereafter provided. Revocation of licenses or permits shall be effective as of the date of revocation by such agency, and shall remain revoked until and unless set aside by a court on review as herein provided. Where an appeal is taken from the judgment of the court on review, the order or determination of the agency shall remain in effect pending such appeal, provided, however, that a stay order may be obtained in the manner and in the cases hereinafter provided. This Act shall not prevent automatic stay of agency action where expressly provided for by law.

SEC. 14. Any party or person aggrieved by any order or determination made by any such agency shall be entitled to a judicial review thereof in accordance with the provisions of this Act. Such review may be had by filing with the circuit or superior court of the county in which such person resides, or in any county in which such order or determination is to be carried out or enforced, a verified petition setting out such order, decision or determination so made by said agency, and alleging specifically wherein said order, decision or determination is:

(1). Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; or

(2). Contrary to constitutional right, power, privilege or immunity; or

(3). In excess of statutory jurisdiction, authority or limitations, or short of statutory right; or

(4). Without observance of procedure required by law; or

(5). Unsupported by substantial evidence.

Said petition for review shall be filed within fifteen (15) days after such order, decision or determination is made by any such agency. Unless a proceeding for review is commenced by so filing such petition within fifteen (15) days any and all rights of judicial review and all rights of recourse to the courts shall terminate.

Written notice of the filing of such verified petition for review and a copy of said petition shall be personally served upon the agency and the Attorney General. Where the agency consists of more than one (1) member it shall be personally served upon the Secretary or Chairman of such agency.

Any party or person so filing such verified petition for review with such court shall within fifteen (15) days thereafter secure from such agency a certified copy of the transcript of said proceedings before the agency including the order or administrative adjudication sought to be reviewed and file the same with the clerk of such court in which such action for review is pending. An extension of time in which to file such transcript shall be granted by said court in which such action for review is pending for good cause shown. Inability to obtain such transcript within time shall be good cause. Failure to file such transcript within said period of fifteen (15) days, or to secure an extension of time therefor, shall be cause for the dismissal of such petition for review by the court or on petition of any party of record to the original proceeding. Where more than one person may be aggrieved by the administrative adjudication only one proceeding for review may be had and the court in which a petition for review is first properly filed shall have jurisdiction. All persons who were parties to the hearing before the agency shall be made parties to the petition for review and shall be notified thereof by the person filing such petition.

SEC. 16. On the filing of a verified petition for such judicial review, said cause shall be docketed by the Clerk of said court in the name of the petitioner or petitioners against such agency and all other parties to the petition. The issues shall be deemed closed by denial of all matters at issue without the necessity of filing any further pleadings. Changes of venue from the judge and from the county shall be granted either party under the law now governing, or which may hereafter govern changes of venue in civil causes.

SEC. 18. On such judicial review such court shall not try or determine said cause de novo, but the facts shall be considered and determined exclusively upon the record filed with said court pursuant to this Act.

On such judicial review if the agency has complied with the procedural requirements of this Act, and its finding, decision or determination is supported by substantial, reliable and probative evidence, such agency's finding, decision or determination shall not be set aside or disturbed.

If such court finds such finding, decision or determination of such agency is:

(1) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; or

(2) Contrary to constitutional right, power, privilege or immunity; or

(3) In excess of statutory jurisdiction, authority or limitations, or short of statutory right; or

(4) Without observance of procedure required by law; or

(5) Unsupported by substantial evidence. the court may order the decision or deter-

mination of the agency set aside. The court may remand the case to the agency for further proceedings and may compel agency action unlawfully withheld or unreasonably delayed.

Said court in affirming or setting aside the decision or determination of the agency shall enter its written findings of facts, which may be informal but which shall encompass the relevant facts shown by the record, and enter of record its written decision and order or judgment.

SEC. 19. An appeal from the judgment of said court including an order remanding said cause may be prosecuted by either party to the Supreme Court as in civil causes, providing a notice of intention to appeal therefrom shall be filed with said circuit or superior court within a period of fifteen (15) days from the date of said judgment, together with an appeal bond conditioned that the appellant will duly prosecute said appeal and pay all costs if the decision of the Supreme Court shall be determined against him with surety approved by the court. Provided, no such bond shall be required of the State of Indiana, its agencies or instrumentalities unless otherwise specifically required by statute.